

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

ROY LEE MCATEER, #147346,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION NO. 2:07-CV-692-WKW
	)	
BOB RILEY, et al.,	)	
	)	
Defendants.	)	

**ORDER**

The Magistrate Judge has reviewed the most recent written report and supporting evidentiary materials filed by the defendants and determined that the plaintiff should file a response in opposition to such pleadings. Accordingly, it is

ORDERED that on or before January 10, 2008 the plaintiff shall file a response to this written report filed by the defendants. **If the plaintiff fails to file a response as required by this order, the court will treat the plaintiff's failure to respond as an abandonment of the claims addressed in the report and as a failure to prosecute this action. The plaintiff is cautioned that he fails to respond to the written report with respect to each of the claims addressed in this report, the court will treat this failure as an abandonment of these claims and shall proceed as justice requires.**

As indicated herein, at some time in the future the court may treat all of the

defendants' reports and the plaintiff's responses as a dispositive motion and responses.<sup>1</sup> Thus, in filing a response to the defendants' last report the plaintiff should not rely only on his or her unsworn pleadings but should respond by filing sworn affidavits,<sup>2</sup> or other evidentiary materials developed through discovery or other appropriate means and which set forth specific facts demonstrating there is a genuine issue of material fact for trial in this case. Failure to file sworn affidavits or other evidentiary materials may result in this court accepting the defendants' evidence as the truth.<sup>3</sup> If documents are referred to in the opposing affidavits and have not been previously filed with the court, sworn or certified copies of those papers must be attached to the affidavits or served with them.

The parties are hereby notified that, unless within fifteen (15) days from the date of this order a party files a response in opposition which presents sufficient legal cause why such action should not be undertaken, upon the expiration of the time for the plaintiff to file a response as allowed by this order, the court may at any time thereafter and without further

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<sup>1</sup>Thus, in preparing a response to the special report filed herein by the defendants on December 20, 2007 the plaintiff should refer to the requirements of Rule 56, Federal Rules of Civil Procedure.

<sup>2</sup>An affidavit is a sworn statement in writing made under oath or on affirmation before a notary public or other authorized officer. The affidavit must be made on personal knowledge, set forth such facts as would be admissible in evidence, and show affirmatively that the affiant is competent to testify to the matters stated in the affidavit.

<sup>3</sup>If the plaintiff is unable to present, by affidavit, facts essential to justify his opposition to the defendants' report, then plaintiff must file a sworn statement as to why he or she is unable to do so.

notice to the parties (1) treat the special reports and any supporting evidentiary materials as a motion for summary judgment and (2) after considering any responses as allowed by the orders of this court, rule on the motion for summary judgment in accordance with the law. The plaintiff is advised that he need not repeat any arguments previously presented to the court in his October 12, 2007 response to the defendants' initial special report.

Done this 20<sup>th</sup> day of December, 2007.

/s/ Susan Russ Walker

SUSAN RUSS WALKER

UNITED STATES MAGISTRATE JUDGE